

REMARKS

Herein, the "Action" or "Office Action" refers to the Office Action dated 4/21/2004.

Applicant respectfully requests reconsideration and allowance of all of the claims of the application. Claims 4, 7, 12, 18, 19, 26, 30-31 are presently pending. Claims amended herein are 4, 7, 12, 18, 30-31. Claims withdrawn or cancelled herein are 1-3, 5, 6, 8-11, 13-17, 23-25, and 27-29. New claims added herein are none.

Allowable Claims

Applicant appreciates the Office's recognition of the allowability of claims 19 and 26. Furthermore, Applicant appreciates the Office's recognition of the allowability of dependent claims 4, 7, 12, 18, and 30-31 if re-written in independent form. Applicant does that herein.

To speed along issues of claims in this case, Applicant cancels claims 1-3, 5-6, 8-11, 13-17, 23-25, and 27-29 which leaves only the allowed claims (4, 7, 12, 18, 19, 26, 30-31) pending.

Formal Rejections

Obviousness-Type Double Patenting

The Office indicates that claims 1-19 and 23-31 are rejected under the judicially created doctrine of obviousness-type double patenting as being

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Serial No.: 09/754,913
 Atty Docket No.: MS1-411USC2
 RESPONSE TO NON-FINAL OFFICE ACTION DATED
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 atty: Kasey C. Christie

unpatentable over claims 1-10, 14-21, 24-27, 30 and 33-37 of U.S. Patent No. 6,339,794. Applicant in this case is the owner of the subject '794 patent.

The Office suggests that a timely filed *terminal disclaimer* in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a non-statutory double patent ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

In accordance with that suggestion, Applicant submits herewith (or forthwith) the appropriate *terminal disclaimer* in compliance with 37 CFR 1.321(c). For this reason, Applicant requests that the Office withdraw its obviousness-type double patenting rejection.

Substantive Claim Rejections

Based upon Northcutt

The Office rejects claims 1-3, 5-6, 8-11, 13-17, 23-25, and 27-29 under USC § 102(a) as being anticipated by Northcutt: *Northcutt et al.*, US Patent No. 5,442,749 (issued 8/15/1995 and filed on 7/9/1993). Applicant respectfully traverses the rejections of these claims.

However, at this time, Applicant withdraws these claims from consideration in order speed along issuance of other claims that the Office indicates are allowable or would be allowable if re-written into independent form.

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Conclusion

All pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the Office is urged to contact the undersigned attorney before issuing a subsequent Action.

Respectfully Submitted,

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